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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,849	10/22/2003	Michael V. Chobotov	021630-004600US	6691

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EXAMINER

WEBB, SARAH K

ART UNIT PAPER NUMBER

3731

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,849

Applicant(s)

CHOBOTOV ET AL.

Examiner

Sarah K. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-30, 34, 39, 47 and 55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-33, 35-38, 40-46 and 48-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/5/06, 5/24/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 1-30,34,39,45,47, and 55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/5/06. The traversal is on the ground(s) that the examiner did not specifically point out why the inventions are distinct. This is not found persuasive because the system does not necessarily have to be used for depositing material in an aneurysm. The requirement is still deemed proper and is therefore made FINAL.

Specification

2. The disclosure is objected to because of the following informalities: the term "pentaerthyritol" is misspelled throughout the application. The correct spelling is pentaerythritol. Appropriate correction is required.

3. Claims 31-33, 35-38, 40-46, and 48-54 are objected to because of the following informalities: the term "pentaerthyritol" is misspelled throughout the application. The correct spelling is pentaerythritol. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 31-33,35,36,40-46, and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPAP No. 2001/0029349 (Leschinsky) in view of US 3,653,959 to Kehr et al., and further in view of US 6,495,127 to Wallace et al.

Leschinsky discloses a system that includes an occlusive balloon catheter and a delivery tube for an in situ polymerizing substance for filling an aneurysm.

Leschinsky fails to include polyethylene glycol diacrylate and pentaerythritol tetrakis 3-mercaptopropionate in the composition. Kehr discloses a polymeric substance that cures in situ. The substance can include polyethylene glycol diacrylate (column 3, line 56) and pentaerythritol tetrakis 3-mercaptopropionate (column 5, line 55), as in Example 12. Since the substances of both Leschinsky and Kehr cure in situ, one of ordinary skill in the art would have been motivated to deliver the Kehr substance with the apparatus of Leschinsky, as this is simply a substitution of functionally equivalent compositions.

Kehr and Leschinsky fail to disclose the addition of a buffer to the composition, but Kehr does disclose many other substances for addition to the mixture and teaches that an accelerator can be added to the composition to optimize the curing rate (column 1-55-60 and column 2, lines 1-7). Wallace discloses compositions for surgical attachment and sealing purposes, such as filling voids (column 5, lines 10-20 and column 14, line 50 – column 15). Wallace teaches that compositions containing polyethylene glycol diacrylate (column 6, line 65) and pentaerythritol tetrakis 3-mercaptopropionate (column 7, line 60) should include a buffer to alter the pH for optimal gelation rate (column 12, lines 28-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a buffer in the

Leschinsky and Kehr substance, as Wallace teaches that this optimizes the rate of curing.

Regarding claims 40-42 and 50-52: The references all provide various molecular weight ranges and proportion ranges for the substances in the mixtures. Only routine skill in the art is involved in determining the optimum value of a variable, such as the weight percent of a component of a composition.

5. Claims 37,38,48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leschinsky in view of Kehr and Wallace, as applied above, and further in view of US Patent No. 5,646,007 to Enomoto et al.

Leschinsky, Kehr, and Wallace fail to state that the buffer is glycylglycine, but Wallace does teach that a phosphate buffer can be used (column 12, lines 5-25). Enomoto discloses other compositions with buffers, and teaches that glycylglycine is a buffer commonly used in medical applications to adjust the pH of compositions as an alternative to phosphate (column 5, lines 35-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use glycylglycine as the buffer in the modified Leschinsky composition, as taught by Enomoto, as this is simply a substitution of functionally equivalent substances.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K. Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan T. Nguyen can be reached on (571) 272-4963. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SKW

8/21/06



JULIAN W. WOO
PRIMARY EXAMINER